In The

Supreme Court of the United States

October Term 1972

No. 71-485.

ROBERT GOTTSCHALK, ACTING COMMISSIONER OF PATENTS,

Petitioner,

v.

GARY R. BENSON AND ARTHUR C. TABBOT,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS.

MOTION OF COMPUTER SOFTWARE ANALYSTS, INC. AND COMPUTERIZED LISTS CORP. FOR LEAVE TO FILE BRIEF AMICI CURIAE

Computer Software Analysts, Inc. and Computerized Lists Corp. respectfully move for leave to file the attached brief *amici curiae* in the above-identified case. Petitioner and respondent have both consented to the filing of this brief. The letters of consent have been filed with the Clerk of the Court.

Applicants submit that the attached brief *amici curiae* will be of assistance to the Court. *Amici* are both small software companies operating in Los Angeles, California. They were formed and are principally owned and operated by software specialists of minority ethnic groups. Briefs of respondents and the briefs *amici curiae* heretofore filed in support of respondent's position have dealt to a degree with the small businessman's view. The present *amici* believe their position unique in that they portray to the court the real-life position of the small businessmen of the black community attempting to compete with giants who vend hardware as well as software and services. This brief presents the view of a small businessman in the computer software field and his need for an effective mode of protection for any of his proprietary intellectual creations which rise to the level of invention.

Accordingly, Computer Software Analysts, Inc. and Computerized Lists Corp. respectfully request that this court grant leave to file the attached brief *amici curiae*.

Respectfully submitted,

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BRIEF AMICI CURIAE FOR COMPUTER SOFTWARE ANALYSTS, INC. AND COMPUTERIZED LISTS CORP.

Computer Software Analysts, Inc. and Computerized Lists Corp. respectfully submit this brief with the consent of both parties. The letters of consent have been filed with the Clerk of this Court.

I.

QUESTION PRESENTED

Whether the Court of Customs and Patent Appeals erred in finding the method of operation of a general purpose computer as set forth by claims 8 and 13 comprises subject matter which may be patented under 35 U. S. C. §§ 100 and 101.

II.

INTERESTS OF AMICI CURIAE

Computer Software Analysts, Inc. and Computerized Lists Corp. engage in the computer field, marketing various computer services and proprietary software products.

Computer Software Analysts, Inc. was incorporated December 1969 with capital of less than $2,000. It had three employees at that time. It now has twenty-six employees. It had sales of about $70,000 in 1970, $150,000 in 1971, and over $500,000 for the year 1972. Mr. Levi J. Carey, president and principal stockholder, is a black businessman. About one-third of the employees are black. Mr. Carey owns the majority stock interest in the company. The rest of the stock is owned by employees. Two of the three Directors of the company are black.

The company business lies in three main areas:

1. Software validation and testing wherein a software tool called QUALIFIER is employed to improve quality of existing software. Their software is made available to customers under a secrecy agreement which restricts availability of the program listing.

2. Systems analysis tasks are undertaken wherein computerized modeling and testing is involved. The company develops and uses proprietary programs to make evaluations.

3. Software development and management under a software program entitled SPLIT, a meta-complier which simplifies the development of software tools and makes existing software usable on different machines without requiring that the program be completely rewritten.

Computerized Lists Corp. was formed in mid-1972 to service commercial non-government activities involving software for computerized mail lists and the like. Two-thirds of the Board of Directors are minority, one black and one oriental. There are at present three employees. It started with a capital of about $2,000. Their products are unique programs for file maintenance and creative accounting.

III.

NEED FOR PATENT PROTECTION

The software industry is of special interest to those of minority races primarily because relatively low capital is required to enter the market. Investment in plants, production machinery, warehouses, and extensive personnel characteristic of many other industries is not required. Intellectual capabilities and know-how as to software and programs are the needed credentials. The only basic machinery requirement can be satisfied by rental of time which is generally available on a computer and computer related equipment.

Entry into the market requires primarily intellectual capability and know-how possessed by software analysts and programmers together with access to data processing machinery.

Staying power, once a software business is launched, may be greatly enhanced by the availability of patent protection on innovations which rise to the stature of invention. In the data processing setting, patents are deemed far more important to the small entrepreneur than to the giant. Patents may make the difference between failure and success to the struggling small unit.

Protection is especially important where the property is characterized by ease of duplication in immediately usable form, as is the case with software.

Absent patent protection, the only other means offering hope of any protection are adoption of (1) copyright measures or (2) secrecy agreements. Secrecy is contrary to the constitutional purpose upon which the patent system is based. *Amici* do not espouse copyright as effective. They see and feel the need for more adequate protection than either copyright or secrecy.

Patent protection for software is, therefore, considered to be of great importance in providing the incentive and shield necessary for small businessmen, whether of minority ethnic groups or otherwise, to successfully compete in the software industry.

IV.

CONCLUSION

Consistent with constitutional purposes to promote such useful arts as *amici* employ, the decision below should be affirmed in all respects.

Respectfully submitted,

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